IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10314 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SUSHILABEN DAVE

Versus

MANAGER, SHANKARACHARYA ABHINAV

Appearance:

1. Special Civil Application No. 10314 of 2003

MR JD AJMERA for Petitioner No. 1

MR NK MAJMUDAR for Respondent No. 1

MR LB DABHAI AGP for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 08/07/2004

ORAL JUDGEMENT

1.1 The petitioner herein has challenged the judgment and decree dated 15/02/03 passed by the learned Civil Judge (S.D.), Jam Khambhalia, in Special Civil Suit No.41 of 1993 at Annexure `H' to the petition, whereby, the learned Judge had directed the petitioner to approach the Gujarat Higher Secondary School Tribunal or the State Government within six weeks thereafter.

2.1 The brief facts of the case are that the petitioner was appointed as an Assistant Teacher in an Institution in 01/08/76. The said Institution was later on took over by a new management i.e. respondent no.1 herein. The service of all the employees of the erstwhile Institution were continued from the beginning, but, for technical reasons, the respondent Institution issued fresh appointment orders to each of the employees including the present petitioner.

2.2 It is the case of the petitioner that the petitioner was treated as a permanent and Trained Teacher of the respondent Institution and was receiving salary regularly. But by letter dated 31/03/90, the petitioner was asked by the respondent Institution to pass B.Ed. Examination as per Government Circular dated 30/06/84, failing which her services would be liable to be terminated. It is also the case of the petitioner that from June 1990, the respondent Institution had stopped the payment of salary to the petitioner, though she was in service. Being aggrieved by the aforesaid action of the respondent Institution, the petitioner filed a Civil Suit being Civil Suit No.41/1993 before the learned Civil Judge (S.D.), Jam Khambhalia.

2.3 It was argued before the learned trial Judge by the respondent Institution that as the Gujarat Higher Secondary Education Tribunal Act was enacted, the petitioner should approach the said Tribunal. The petitioner preferred application being Application No.129/2003. The said application came to be disposed of by order dated 28/04/03 on the ground of want of jurisdiction, as it was not a dispute between an employee and employer of a registered Private Secondary School. Therefore, it was kept open to the petitioner to move appropriate forum.

3.1 Mr.J D Ajmera learned advocate appearing for the petitioner has submitted that since the petitioner was drawing a salary of more than Rs.1,500/- per month, the petitioner could not approach the Labour Court. He has

contended that if the matter is remanded back to the Tribunal for adjudication, then the petitioner will have no remedy, as the Tribunal had no jurisdiction to entertain the matter. Mr.Ajmera has further submitted that the only remedy which is available to the petitioner is a Civil Suit.

4.1 Mr.N K Majmudar learned advocate appearing for the respondent Institution has vehemently opposed to the submissions advanced by Mr.Ajmera. He has submitted that the petitioner had to prefer Appeal against the decision of the trial Court, and therefore, a petition under Article 226 of the Constitution of India is not maintainable. He has, therefore, submitted that the Court may not exercise its discretionary power in favour of the petitioner.

5.1 I have gone through the averments made in the petition and the documents placed on record. The contention raised by Mr.Majmudar is misconceived, inasmuch as, the petitioner had accepted the order of the trial Court and had approached the Tribunal, as per the order of the learned trial Judge. The Tribunal had rejected her application on the ground of want of jurisdiction. Therefore, the petitioner had no other option, but, to approach this Court through this petition.

6.1 The view taken by the Tribunal that it has no jurisdiction appears to be correct, in view of the fact that the petitioner was drawing a salary of Rs.1,500/- per month, therefore, she could not be termed to be a "Workman" under Section 2(S) of the Industrial Disputes Act, 1947 also. Therefore, the only alternative which would be available to the petitioner would be to approach the Civil Court.

7.1 For the foregoing reasons, this petition is allowed. The judgment and decree dated 15/02/03 passed by the learned Civil Judge (S.D.), Jam Khambhalia, in Special Civil Suit No.41/1993 at Annexure `H' to the petition, is ordered to be quashed and set aside. The Civil Judge (S.D.), Jam Khambhalia, is directed to hear and decide the case of the petitioner afresh on merits, without being influenced by its observations and findings in its order at Ex.134. The said exercise shall be completed within three months from the receipt of writ from this Court. Rule is made absolute accordingly with no orders as to costs. It will be open to the parties to advance fresh arguments, if they so desire.

(K. S. Jhaveri, J.)

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